

**Before the
Federal Communications Commission
Washington, D.C. 20554**

WC Docket No. 11-50

In their reply comments to the FCC, Dish Network suggests that the terms “make” and “initiate”, as they are used in 227(b)(1)(A) and 227(b)(1)(B), respectively, can only be defined as referring to; “the actual users of the telephone equipment”. Dish Network further suggests that this is; “the common sense meaning of the terms “initiate” and “make” in the context of a telephone call”, and that all other definitions of these terms must be “implausible definitions that would impermissibly expand the scope of the TCPA and the regulations promulgated thereunder”. Finally, Dish Network asserts that; “the TCPA simply does not create liability (nor did it authorize the FCC to create liability) – strict or otherwise – for a person or entity who merely authorizes another to sell its product or service”.

Obviously Dish Network would like to pick and choose which companies they authorize to market their services, then accept the benefits of what those companies do on their behalf, and then disavow any liability for what those companies do on their behalf. However, the common sense meaning of the terms “initiate” and “make” in the context of a telephone call, and particularly in the context of the TCPA, does not refer to “the actual users of the telephone equipment”, and it is not impermissible nor beyond the scope of the FCC’s authority to define those terms as referring to an entity who “merely authorizes” another entity to market or sell its product or service.

In point of fact, the TCPA creates liability by stating that: “It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States - **to initiate** any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party.” When one company authorizes another company to market or sell its product or service, the former company *ipso facto* “initiates” what that latter company does on its behalf. This is not a question of “agency law” as suggested by Dish Network, this is a question of how one defines the term “initiate”. There is nothing about “agency law” (Federal or State) in the TCPA, and the concept of “agency law” has no place in the TCPA.

Dish Network suggests that; “The Commenters have asserted various “parades of horrors” that will result if the Commission does not adopt their expansive reading of the TCPA.” This is a misstatement of the facts as presented by the people who have chosen to comment in this proceeding. The people who have submitted comments in this proceeding, myself included, have not presented a “parade of horrors” that they hypothesize might possibly result in some distant future if the FCC does not adopt their “expansive” reading of the TCPA. Instead they have presented, each based on his or her

own personal experiences, the “parade of horrors” that already happen each and every day - in part because the FCC has not yet articulated a common sense definition for the term “initiate”. This point cannot be understated. Although the FCC was not requesting examples from commenters as to their specific experiences, the people who have submitted comments in this forum none-the-less related their own personal experiences dealing with unscrupulous telemarketers, and the companies that pay them, accept the benefits of what they do, and then seek to deny any responsibility or liability for what was done on their behalf. What’s more, the people who chose to submit comments in this forum, and the experiences that they relate, represent just tip of the iceberg. One can search the internet and easily find thousands of posts in various forums corroborating that the “parades of horrors” described by those who have submitted comments in this forum are already happening each and every day to hundreds of thousands of people.